

REMARKS

Specification

In the amendment to the specification, the word "comprise" has been changed to --comprises-- and the word "includes" has been changed to --include--. These changes are grammatical in nature and do not add new matter to the specification.

Claim Rejections

35 USC 103. Claims 1-4, 11-14, 21-22 were rejected by the Examiner in the Office Action of 04/14/05 under 35 USC 103(a) based on the German patent issued to Eberlein (08-1992).

Applicant does not agree with the Examiner's rejection based on the assertion that the teaching of Eberlein renders obvious the invention as set forth in claims 1-4, 11-14 and 21-22. There is nothing in Eberlein's teaching to suggest the modification as set forth by the Examiner in her rejection. To modify Eberlein's teaching as suggested by the Examiner constitutes hindsight and would not have been obvious to one of ordinary skill in the art.

The Examiner has stated that it would have been obvious to one of ordinary skill in the art to "modify the shopping cart [of Eberlein] having a holster receptacle receiving the wheels of the add-on [stroller], such that the add-on [stroller] has a holster receptacle for receiving the wheels of the shopping cart in order to allow a user to apply a greater pushing force on the add-on [stroller] for driving the shopping cart and minimize the likelihood of the two-vehicles separating." She further adds that "it has been held that rearranging parts of an invention involves only routine skill in the art."

Firstly, applicant contends that the modification of Eberlein does not constitute "the rearranging of parts of an invention". The modification as suggested by the Examiner involves taking parts from one device, namely Eberlein's shopping cart and adding those parts to another

separate device, namely the stroller attached to Eberlein's shopping cart. Nonetheless, the Examiner has failed in her rejection to provide proper motivation for "rearranging" the elements between the stroller and Eberlein's shopping cart.

Secondly, in her rejection the Examiner has suggested further evidence supporting the novelty of applicant's invention over the prior art. She sets forth an improved function of the modified prior art of Eberlein as allowing a user to apply a greater pushing force on the stroller for driving the shopping cart and minimizing the likelihood of the two vehicles from separating. Such an improved function as exhibited by the instant invention would not have rendered the modification obvious in view of Eberlein's teaching. Rather it substantiates the inventiveness of applicant's add-on section.

In addition, the instant invention is not obvious in view of the teaching of Eberlein, since the connector between the combined unit of Eberlein functions in a different manner than the non-rigid connector between the combined unit of applicant's invention. The forces acting on and between the shopping cart of Eberlein and the stroller are completely different from those of the instant invention. The front of Eberlein's stroller rests on the base of his shopping cart. Therefore the weight of the stroller bears directly on the shopping cart. Were the stroller modified, as suggested by the Examiner, to include the connector from the shopping cart, the weight of the shopping cart would then bear directly on the stroller and the forces between the shopping cart and the stroller would change significantly. By changing the forces between the shopping cart and the stroller, the dynamics of the combined unit also change significantly. As the Examiner has stated in her rejection, such a modification would allow "a user to apply a greater pushing force on the add-on". She adds that the modified device would also "minimize the likelihood of the two vehicles separating." Based on her statements in the rejection, it is clear that such a modification would be unobvious and the improvements resulting from the modification would comprise novel and patentable advances in the art. Therefore, it is believed

that to modify the stroller of Eberlein as suggested by the Examiner in her rejection of 04/14/05 would not have been obvious to one of ordinary skill in the art.

The coupling means as cited in claims 12 and 22 is adjustable. Claims 12 and 22 state that “said non-rigid coupling means comprises an adjustable holster.” There is nothing in the teaching of Eberlein to suggest that the coupling means on his shopping cart is adjustable, nor that it would be obvious to render it adjustable. Therefore, the teaching of Eberlein fails to disclose the limitations recited in claims 12 and 22 that the coupling means is adjustable.

One of the advantages of the add-on section of the instant invention is that it can be retrofitted to conventional shopping carts without modifying the cart. Economy and convenience are the results, since a shopping cart need not be modified in order to attach to an add-on section of the instant invention. In addition shopping carts of different sizes can be used with one of applicant’s add-on section. In Eberlein’s teaching, it is necessary for all of the shopping carts that are to be used with the stroller be fitted with the wheel holster.

The add-on section of applicant’s invention has four wheels that are in contact with the ground during use, making the combined unit more easily maneuverable than Eberlein’s combined unit in which the stroller has only two wheels contacting the ground. As the Examiner pointed out in her rejection, less force is required to push the combined unit with applicant’s add-on section. Unlike Eberlein’s combined unit in which the front wheels of his add-on section or stroller rest on the shopping cart, in applicant’s invention the rear wheels of the shopping cart are held in the holster of the add-on section.

In contrast, the force applied to the shopping cart of Eberlein by the stroller has a horizontal component and a significant vertical component requiring more force to move the combined unit. With the front wheels of the stroller off the ground and resting on the shopping cart, the stability of the stroller is compromised and is not as easily maneuvered as a combined unit with the applicant’s add-on section holding the rear wheels of the shopping cart. The

improved stability provided by the add-on section of applicant's invention would render unobvious the modification of Eberlein's teaching as suggested by the Examiner in her rejection of the claims.

In claims 3 and 12, the non-rigid coupling means is a holster. The holster is recited in claims 3 and 12 as comprising "an *adjustable* holster." The holster on the shopping cart of Eberlein is not adjustable. Consequently, the prior art cited by the Examiner does not meet all of the limitations set forth in claims 3 and 12 and the rejection of the claims based on the teaching of Eberlein is improper.

For the above reasons, applicant contents that the rejection of claims 1-4, 11-14 and 21-22 under 35 USC 103(a) as being obvious in view of Eberlein's teaching is improper and requests that the rejection be withdrawn.

Claims 5-7, 15-17 and 23 were rejected by the Examiner (Office Action of 04/14/05) under 35 USC 103(a) based on the German patent of Eberlein as modified by the teaching of McCance (PN 3,428,332).

It should be noted that Patent No. 3,428,332 was issued to patentee McCance and not Chance as stated in the rejection. Presumably, the rejection is based on the teaching of McCance and the following response is directed thusly.

Applicant does not agree with the rejection of the claims based on the teaching of Eberlein as modified by McCance. The separate receptacles in claims 5, 15, and 23 which are comprised by the holster of the instant invention are each adapted to hold a rear wheel of an attached shopping cart. This arrangement minimizes sideways motion of the cart's wheels held therein as well as minimizing motion of the cart. In Eberlein's teaching the wheel holster would allow the front wheels of the stroller to shift back and forth along the length of the V-shaped trough making it more difficult to maneuver the combined unit.

In claims 16 and 23, the receptacles comprised by the holster are adjustable in order to adapt to fit differently sized shopping carts. Claim 16 states that "said non-rigid coupling means further comprises a receptacle adjusting means for selectively adjusting a distance between the first and second receptacles". Claim 23 states that a "non-rigid connector comprises first and second receptacles and receptacle adjusting means". While McCance does disclose a wheel-holder for supporting a vehicle or vehicles being towed, he does not teach that the wheel-holders are adjustable. He does not even contemplate that the wheel-holders would be adjustable relative to each other, since each of the holders are intended to support single wheel of a motorcycle. The holders are not intended to support a pair of axled wheels in which the distance between the wheels is crucial to gauging the distance between the receptacles. Therefore, it would not have been obvious to make the wheel-holders of McCance's towing apparatus adjustable relative to each other.

The device of McCance is used to hold the wheel of a vehicle being pulled, while the holster of Eberlein is designed to receive the wheel of a vehicle being pushed. The wheel-holder of McCance does not function in the same manner as the holster of Eberlein. Consequently, the two would not be considered parallel fields of art and McCance's wheel-holder would not be a proper substitute for the wheel holster of Eberlein. Therefore, it would not have been obvious to modify Eberlein's teaching with that of McCance.

For the foregoing reasons, it is believed that the rejection of claims 5-7, 15-17 and 23 under 35 USC 103(a) based on Eberlein in view of McCance is improper and request that the rejection be withdrawn.

Claims 8-10, 18-20, and 24-27 were rejected in the Office Action of 04/14/05 under 35 USC 103(a) based on the German patent of Eberlein as modified by McCance and in further view of the teaching of Vaughn et al. (PN 5,145,308).

In claims 8, 10, 18, 20, 25 and 27 the receptacles each have sidewalls in addition to the bottom walls. The claim limitations, including sidewalls, are not shown by the teaching of Eberlein. In applicant's invention, the sidewalls of the receptacle deter shifting of the cart's wheels from side to side and inhibit the wheels from rolling back and forth. The non-rigid connection provides an improved connection between the add-on section and the shopping cart by securing the cart wheel within the holster and decreasing the possibility of the wheels from coming out of the holster, while still allowing relative movement between the add-on section and the shopping cart to occur.

Also in her rejection of claims 8, 18 and 25, the Examiner sets forth that Eberlein as modified by McCance does not show first and second surfaces disposed at an obtuse angle to comprise the bottom surface of the receptacle as claimed. She states that Vaughn et al. disclose a vehicle receptacle having a bottom surface with a first planar surface (54) and a second surface (55) disposed at an obtuse angle" and it would have been obvious to modify Eberlein and McCance with the teaching of Vaughn et al. However, it should be noted that while the second surface (55) of Vaughn et al.'s wheel receptacle is planar, the first surface (54) is not planar. Claims 8, 18 and 25 recite "a bottom wall having first and second generally planar surfaces". These claim limitations are not met by the teaching of Eberlein as modified by McCance and Vaughn et al. For the foregoing reasons, claims 8-10, 18-20 and 24-27 are improper and should be withdrawn.

Claims 28-30 were rejected by the Examiner in the Office Action (04/14/05) under 35 USC 103(a) based on the German patent of Eberlein as modified by McCance and Vaughn et al ('308) and in further view of McKelvey (PN 6,575,480).

The rejection of claims 28-30 based on Eberlein as modified by McCance, Vaughn et al. and McKelvey is improper under 35 USC 103(a) and should be withdrawn for the following reasons. The patent of McKelvey and applicant's invention are both assigned to Assembled

Products Corporation in Rogers, Arkansas. The same consideration is given to patents and applications having the same assignee as is given to those having the same inventor in regard to the statutes. Since the patent of McKelvey issued after the effective filing date of applicant's invention, McKelvey's teaching is not considered prior art under patent statutes. (See 35 USC 103 and 102.)

Notwithstanding, the limitations of claims 28-30 are not met by the teaching of Eberlein as modified by McCance, Vaughn et al. and McKelvey, as follows.

Claim 28 recites that the add-on section comprises a non-rigid connector that is "disposed on the front portion of said base." As applicant has contended previously, there is nothing in the prior art to suggest "rearranging" the elements of Eberlein's shopping cart by moving the wheel-holding receptacle onto the stroller which is otherwise attached to the shopping cart by its front wheels. Claim 28 specifies that the non-rigid connector is positioned on the front portion of the add-on section. Applicant contends that it would not have been obvious to locate the wheel-holder of Eberlein's shopping cart on the stroller, and furthermore it would have not been obvious to place Eberlein's wheel-holder on the front of the stroller as claimed without having the benefit of the teaching from applicant's own invention.

Furthermore, in applicant's invention, the first receptacle is attached to the left side of the add-on section's platform and the second receptacle is attached to the right side of the platform. Specifically, claim 28 states that, "one end of said first arm is attached to said first receptacle and an opposite end of said first arm is attached to a left side of said platform; one end of said second arm is attached to said second receptacle and an opposite end of said second arm is attached to a right side of said platform".

The prior art of Eberlein as modified by McCance, Vaughn et al. and McKelvey fails to disclose or even suggest these limitations set forth in applicant's claim 28. Therefore, claim 28 and depending claims 29 and 30 cannot be deemed obvious by the teachings of the prior art.

For the foregoing reasons, it is believed that claims 1-30 are allowable and requests that the claims be passed to issue.

Conclusion

The above amendments being fully responsive to all outstanding rejections and formal requirements, it is submitted that this application is in condition for allowance, and a notice to that effect is earnestly solicited. In the event that a telephone conference will expedite the allowance of this application, the Examiner is urged to contact the undersigned at the phone number listed below.

Respectfully submitted,



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Certificate of Mailing

I, Boyd D. Cox, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, PO Box 1450, Alexandria, VA 22313-1450

on 7.14.05 by _____
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(Date) (Signature) 7.14.05 (Date)